

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JAN 24 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0196-PR
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
THOMAS PATRICK PURCELL,	)	Not for Publication
	)	Rule 111, Rules of
Petitioner.	)	the Supreme Court
	)	

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PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20022733

Honorable Michael D. Alfred, Judge

REVIEW GRANTED; RELIEF DENIED

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Barbara LaWall, Pima County Attorney  
By Kathleen Mayer

Tucson  
Attorneys for Respondent

Thomas P. Purcell

Florence  
In Propria Persona

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PELANDER, Chief Judge.

¶1 After a jury trial in 2003, petitioner Thomas Purcell was convicted of three counts of sexual conduct with a minor under the age of fifteen and one count of attempted sexual conduct with a minor under fifteen. The trial court sentenced Purcell to a combination of concurrent and consecutive, presumptive prison terms totaling twelve years.

We affirmed Purcell’s convictions and sentences on appeal. *State v. Purcell*, No. 2 CA-CR 2003-0191 (memorandum decision filed Nov. 23, 2004). The supreme court denied review, and we issued our mandate on August 1, 2005.

¶2 Purcell filed a timely notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., on July 13, 2005. Appointed counsel filed a notice, pursuant to *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614, *supp. op.*, 182 Ariz. 118, 893 P.2d 1281 (1995), averring that she had reviewed the record but was unable to find any claims cognizable under Rule 32 and requesting that Purcell be permitted to file a petition in propria persona. Subsequently, counsel moved to vacate her notice of review and requested that Purcell’s sentence be modified to delete the term of community supervision, which had not been authorized by the statute in effect in 1982 and 1983 when he committed his offenses. Purcell then filed a pro se petition requesting the court to reduce his sentences as a matter of clemency.

¶3 The trial court granted relief, in part, amending the sentencing minute entry to delete all references to community supervision. The court denied Purcell’s request to reduce his sentences, however, concluding it “ha[d] no authority to alter or amend a lawful sentence lawfully imposed.” This petition for review followed.

¶4 In his petition for review, Purcell argues his sentence was illegal because the sentencing court failed to articulate a reason for imposing a consecutive sentence as required by the version of A.R.S. § 13-708 in effect in 1983. *See* former A.R.S. § 13-708, 1977 Ariz. Sess. Laws, ch. 142, § 57; 1978 Ariz. Sess. Laws, ch. 201, §§ 104, 108. We will not address

claims that have not been presented to the trial court in the Rule 32 proceeding below. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see generally* Ariz. R. Crim. P. 32.9. Moreover, because this claim was raised and rejected on appeal, it is precluded. Ariz. R. Crim. P. 32.2(a)(2).

¶5 To the extent Purcell challenges the trial court’s denial of his request for a reduction of sentences, the trial court did not abuse its discretion in denying this claim. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990) (ruling on petition for post-conviction relief reviewed for abuse of discretion). Purcell’s request is not a cognizable claim under Rule 32, and as the trial court correctly ruled, a court has no authority to alter a lawful sentence. *See, e.g., State v. House*, 169 Ariz. 572, 573, 821 P.2d 233, 234 (App. 1991). Purcell also asks us to consider “his personal reasons for requesting this mitigation,” including his advanced age, his declining health, and the needs of his family. We have no authority to reduce his sentences in this post-conviction proceeding.

¶6 Although we grant the petition for review, we deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge